

REMARKS

Further examination of claims 39, 43, 44, and 46-57 is reported in the present Office Action. Claims 39, 44, and 49-57 remain rejected under 35 U.S.C. § 102(e), while claims 39, 43, 46-49, 51-54, and 56 are newly rejected under 35 U.S.C. § 102(e). Claims 39, 43, 44, and 46-57 were objected to and rejected under 35 U.S.C. § 112, second paragraph. Each of the rejections and the objection are addressed as follows.

Rejections under 35 U.S.C. § 102(e)

The rejection of claims 39, 44, and 49-57 under § 102(e) as being anticipated by Guy et al., U.S. Patent No. 6,126,938, has been maintained, on the basis that the claims still permit “salts thereof” to be in the form of liposomes which, according to the Examiner, the Guy patent teaches. This rejection has been met by the present amendment to claim 39, from which the other rejected claims depend, which now specifies that the “salts thereof” also are not in the form of liposomes. Applicants thus respectfully request that this rejection be withdrawn.

Claims 39, 43, 46-49, 51-54, and 56 were newly rejected under 35 U.S.C. § 102(e) as being anticipated by Cover et al., U.S. Patent No. 6,054,132. This rejection is based on the Examiner’s assertion that Cover’s mention of the use of “lipid polyvalent cations” as an adjuvant inherently anticipates the present claims, because this teaching of Cover is the same or equivalent to that of the present claims. Applicants respectfully disagree with this rejection.

The cationic lipid compounds of the present claims are clearly delineated as having specific features such as, for example, being weak inhibitors of protein kinase C and having a structure that includes a lipophilic group derived from cholesterol, a bonding group selected from carboxyamides and carbamoyls, a spacer arm consisting of a branched or unbranched linear alkyl

chain of 1 to 20 carbon atoms, and a cationic amine group selected from primary, secondary, tertiary, and quaternary amines. None of these features of such a compound are mentioned in the Cover patent, which merely mentions the use of a broad class of compounds, that certainly includes compounds that are very different from those specified in the present claims. Surely it cannot be that Cover's general statement as to the use of lipid polyvalent cations can be said to anticipate claims to the use of any and all compounds that may be in this class. Cover merely mentions a genus of which the present compounds may or may not be species, and it is well established that a species is not anticipated by a teaching of a genus that does not name the species or make it at once apparent (see, e.g., M.P.E.P. § 2131.02). There is no issue of inherency here, as clearly the teaching of Cover is to a very broad category of compounds, while those of the present claims are more specific. Applicants thus respectfully request that this rejection be withdrawn.

Objection and Rejections under 35 U.S.C. § 112, second paragraph

Claims 39, 43, 44, and 46-57 were objected to because the elected claims recite a non-elected invention. The objection has been met by the present amendment to claim 39, from which the other claims depend, to specify only the elected invention. The rejection of these claims under § 112, second paragraph on this basis has also been met by this amendment.

Claim 39 was further rejected on the basis that it is not clear whether the specification of the lipid as not being provided in the form of a liposome applies also to the recited "salt thereof." This rejection has been met by the present amendment to claim 39, which, as was suggested by the Examiner, now specifies that the "salt thereof" also is not in the form of a liposome.

Claim 49 was rejected as not further limiting claim 39, from which it depends. Claim 49 has been canceled. Further, as was suggested by the Examiner, claim 50 was amended to depend from claim 39.

Information Disclosure Statement

Applicants note that an Information Disclosure Statement was filed in this case on August 20, 2001, and that an initialed copy of the corresponding Form PTO 1449 has not been forwarded to them. Applicants thus request that an initialed copy of that Form PTO 1449 be forwarded to them with the next Office Action in this case.

CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. Enclosed is a Petition to extend the time period for replying to the Office Action for three months, to and including March 2, 2004, and a check in payment of the required extension fee. If there are any additional charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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